

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JONATHAN VALENTINE,

Defendant.

8:09CR380

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's "Motion to Reduce Sentence Pursuant to The First Step Act Section 404 under 18 U.S.C. 3582(B)(2) - (C)(2)," ECF No. 132.

The Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010), effective August 3, 2010, reduced the penalties for certain crack cocaine offenses. The First Step Act, at § 404, permits but does not require sentencing judges to apply the Fair Sentencing Act to sentences imposed prior to August 3, 2010.

In *United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019), the Court of Appeals noted that a court considering a motion for a reduced sentence under § 404 of the First Step Act first must decide whether the defendant is eligible for relief, and then must decide, in its discretion, whether to grant a reduction.

The Defendant was sentenced on June 30, 2010, to a term of 89 months incarceration and five years of supervised release, for trafficking in crack cocaine. His sentence was reduced to 72 months on February 29, 2012, pursuant to 2011 retroactive Crack Cocaine Guideline Amendments. He completed his term of incarceration, and commenced his term of supervised release, followed by a series of violations of the

conditions of his supervision. Most recently, he was sentenced to a term of 27 months incarceration on December 10, 2018, to be served consecutively to his term of incarceration in Case No. 8:18cr102—a matter concerning Hobbs Act Robbery in violation of 18 U.S.C. §1951.

The Defendant suggests that his underlying sentence in this case, which he has already served, should be reduced pursuant to the First Step Act, and the reduction credited toward the 27-month term imposed with respect to his violation of supervised release. The Court concludes that the Defendant is not eligible for relief under the First Step Act. If the Defendant were eligible, the Court would not exercise its discretion to reduce the Defendant's sentence.

IT IS ORDERED:

1. The Defendant's "Motion to Reduce Sentence Pursuant to The First Step Act Section 404 under 18 U.S.C. 3582(B)(2) - (C)(2)," ECF No. 132, is denied;
and
2. The Clerk will mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 8th day of June 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge